Kentucky Law Journal

Volume 49 | Issue 3 Article 10

1961

Race Relations and American Law by Jack Greenberg

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Book Reviews

RACE RELATIONS AND AMERICAN LAW. By Jack Greenberg. Columbia University Press, New York, 1959. 481 pp.

Race Relations and American Law, by Jack Greenberg, is an extremely interesting legal work. It treats comprehensively each of the major issues of our time concerning White-Negro relations in the United States, discussing in detail the state and development of the law in each of these areas.

Moreover, it discloses Mr. Greenberg's philosophy as to the role of the law in the field of racial relations, illustrates what the law is capable of doing and comments upon the manner in which it should be employed. This aspect of the book is lent considerable significance by the fact that the author is assistant counsel for the National Association for the Advancement of Colored People (NAACP).[1] This gives the reader the impression that the views expressed are not merely the author's, but, in a large measure at least, those of the NAACP and many American Negroes.

As a legal reference, *Race Relations and American Law* is excellent. It covers the field in this subject, from education, public accommodations and housing, to the more settled or less publicized issues—the armed forces and domestic relations. The coverage is ample, annotations plentiful, and the material presented appears clear and accurate. It is the legal philosophy propounded by the author with which the reader may well find himself taking issue.

In commenting upon the desirability of a social order wherein racial harmony has been achieved, the author states, on page 26, "[W]e may inquire what role law can play in working toward such an order." It would seem, especially upon considering the potential capabilities of law which are pointed out during the course of the book, that a more nearly proper inquiry would be what role the law *should* play in such an undertaking. This thought is not pursued, however, and is mentioned only where the implementation of the law is designed to further some expressed aim of the Negro.

One of such expressed aims, and apparently the basic goal of Mr. Greenberg's association, is what the author terms "affirmative

[1] Greenberg, "Social Scientists Take the Stand," 54 Mich. L. Rev. 953 (1956).

integration."[2] Advocacy of this concept runs throughout the book, the principle point being that the law should not only be used to eliminate segregation, but on the contrary, should see to it that everything from education to housing be so arranged that a complete homogenization of the two races is achieved.[3] The extremes to which it is said this proposal should go are illustrated in the chapter on housing, where the author complains extensively of the fact that public housing authorities recognize color as a basis for allocation of facilities. After asserting the unconstitutionality of such actions, he suggests on page 292 that it may be proper for such an authority to recognize race for the purpose of affirmative integration in public housing systems. In touching on this obviously delicate constitutional issue the author states, "It may be contended that such an effort is unconstitutional notwithstanding its motivation." But he argues, "The Constitution does not require inflexible formalisms, it looks to the substance of the issue." While it may well be that in recent years the Constitution has been severely stretched,[4] such a theory as this one advanced by Mr. Greenberg would produce a ridiculously paradoxical result. While on the one hand a government agency would be prohibited by the Constitution from considering race in allocating its facilities, it would, on the other, be constitutionally permitted to do just that, thus placing the Constitution in direct opposition to itself on the issue. There would seem to be little question that such activity is equally as unconstitutional as segregation itself.[5]

The question arises at this point, as to whether the author and those whose philosophy he propounds wish to attain equal protection of the law for all men, or whether, instead, they wish to go beyond this by twisting the law into a tool with which to enforce their own sociological theories and experiments.

Closely allied to "affirmative integration" is the subject of so-called "de facto segregation." The author explains on page 249 that the "de facto" problem occurs primarily where there are large Negro areas which produce all Negro or "de facto segregated" schools. The problem, he asserts, is aggravated by unfair or unreasonable zoning laws. It is probable that if a school zone were to wind like a

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[2] Statement of Robert C. Weaver before the 50th anniversary convention of the NAACP, N.Y. Times, July 15, 1959, p. 13, col. 1.

[3] Greenberg, Race Relations and American Law, pp. 25, 253, 256, 257, 273, 275, 291, 292, and 311 (1959).

[4] See James v. Duckworth, 170 F. Supp. 342 (E.D. Va. 1959), aff'd, 267 F. 2d 224 (4th Cir. 1959), *cert. den.* 361 U.S. 835 (1959). See also Blaustein and Ferguson, Desegregation and the Law, (1957), 58 Colum. L. Rev. 428 (1958).

[5] Progress Development Corp. v. Mitchell, 182 F. Supp. 681 (N.D. Ill. 1960).

thread throughout a city in order to encompass its colored population, segregation would be said to exist.[6] But the author attacks even such cities as New York where this is obviously not the case.[7] Again affirmative integration, this time by local governments, is urged as a panacea to the situation.

As mentioned before, many of the fundamental rights which are basic to the American way of life appear to be overlooked in the argument for the theory of "affirmative integration." Nowhere is this fact more noticeable than in Mr. Greenberg's section on real property and housing. Throughout this entire section is found the theme that the law should strive, as far as possible, to force the integration of housing facilities, both public and private. It is at this point that the reader is given a clear insight into the real meaning of "affirmative integration." It becomes obvious that what is really meant is "forced integration;" in other words, government compulsion of individuals of different races to live in close proximity with one another, regardless of their personal desires in the matter. Practically every conceivable theory of government and legal action is proposed in order to accomplish this scheme. On page 293, Mr. Greenberg sets forth the idea of deliberately locating public housing projects in such strategic locations that needy persons of both races living near the area will be forced to move into this project if they wish to remain in their neighborhood.[8] Again, on page 292, the possibility is explored of a quota system which includes the refusal of certain accommodations to needy Negro families in largely Negro apartment houses or neighborhoods, solely in order to leave room into which white persons may move.[9] Finally, on pages 308 and 309, the author exhuberantly enumerates a host of new laws which, in effect, prohibit the property owner from exercising his free choice in selecting vendees or lessees for his property, and in some cases permit the state to make this choice for him.[10] As desirable as integration may be to many, it is obvious that those who do not share these feelings have fundamental rights, among these being freedom of choice[11] and freedom to use and

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[6] Jones v. School Board, 278 F. 2d 72 (4th Cir. 1960).

[7] N.Y. Times, Jan. 17, 1960, p. 1, col. 6.

[8] See also Greenberg, *supra* note 3 at 312.

[9] The New York City Housing Authority has already taken this step. New York Times, Feb. 23, 1958, p. R. 1, col. 8, R. 2, col. 2; Nov. 19, 1959, p. 24, col. 5; July 24, 1959, p. 26, col. 2; Aug. 29, 1960, p. 39, col. 1.

[10] Avins, "Anti-Discrimination Legislation as an Infringement on Freedom of Choice," 6 N.Y.L.F. 13 (1960).

[11] *Ibid. Cf.* New York State Comm'n Against Discrimination v. Pelham Hall Apartments, Inc., 10 Misc. 346, 171 N.Y.S. 2d 558 (1958), noted by Mr. Greenberg at p. 307, n. 129.

dispose of private property.[12] One can scarcely fail to see flagrant disregard of these rights in promoting the cause of "forced integration." Several searching questions may well be raised at this point. First, since state action forcing the races to live apart has been held unconstitutional, why then is it permissible for such state action to force them to live together? It is set forth that all persons shall receive the equal protection of the laws, regardless of race, creed, or color.[13] In other words, as is pointed out by the author on page 292, "Our Constitution is color blind."[14] How can it be said that equal protection of the laws is truly being afforded if on the one hand a state is prohibited from enforcing the biased views of one racial philosophy and, on the other hand, it is permitted to enforce the equally biased concepts of another? Would it not be more in accord with the spirit and intent of the Constitution if state action, both segregation and "affirmative integration," were prohibited altogether in the field of race relations, leaving the task of achieving racial unity to education, religion, and the morals and consciences of men, and thus refraining from interference with any of those aforementioned rights so important to all Americans?[15] Objective answers to these questions should lead the reader to the conclusion that forced integration is forbidden by the same laws and decisions that condemn segregation.[16] Little mention, however, is made in this book of such questions as these. The author reluctantly admitted, on page 292, that such schemes of "affirmative integration" had not been put to a judicial test.[17]

In view, apparently, of the substantial doubt as to judicial cooperation in such a program, a point is made advocating administrative implementation of this purpose. The author states on page 16, in regard to the administrative method, "An administrative agency, or an attorney general or other official with comparable powers, can be more effective than private suitors or criminal prosecutors. . . . An administrative approach offers opportunity to employ the law in unusual ways." That this is indeed true is illustrated on page 291

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[12] Witherwax, "Anti-Discrimination Legislation as it Affects Real Property Rights," 23 Albany L. Rev. 75 (1959). See also O'meara v. Washington State Bd. Against Discrimination, (Superior Court Kings County, Washington, No. 535, 996, July 31, 1959), 4 Race Rel. L. Rep. 682 (1959).

[13] U.S. Const. amend. XIV, §1.

[14] Harlen, J., dissenting in Plessy v. Ferguson, 163 U.S. 537, 559 (1896).

[15] Avins, *supra* note 10 at 25; Witherwax, *supra* note 12; *cf.* Greenberg, Race Relations and American Law, 27 U. Chi. L. Rev. 598 (1959).

[16] See Hughes v. Superior Court, 339 U.S. 460 (1950); City of Montgomery v. Gilmore, 277 F. 2d 364, 369, n.5 (5th Cir. 1960); note, "Racial Discrimination in Housing," 107 Pa. L. Rev. 515, 540-550 (1959); Navasky, "The Benevolent Housing Quota," 6 How. L.J. 30 (1960).

[17] But see Progress Dev. Corp. v. Mitchell, *supra* note 5, where they were found to be unconstitutional.

where one finds set forth the attempt of the chairman of the New York State Commissions Against Discrimination to encourage integration through action; *i.e.* enforcing the quota system in public housing.[18]

The desirability of administrative action to further the ends of the integrationists is urged in every section of the book. There are numerous examples of how administrative agencies can, and are, forcing integration by, as the author has noted, "employing the law in unusual ways."[19] These ways are, it is implied, always desirable and often necessary if integration is to be accomplished. This unquestionably is the law in its strongest and most effective form.[20] It is obvious why any group, integrationists included, should seek to have this form of law employed to further its own ends.

The only question remaining is the one originally asked, namely, *should the law be utilized in this manner?* In his consideration of this question, the reader can scarcely overlook a point which is made in the conclusion of the last section, "The Armed Forces." In this section it is shown that in the Armed Services almost complete integration has been achieved by virtue of the fact that absolute governmental control exists therein. In his conclusion, on page 369, the author points out, "Integration of the armed forces shows the potential of law for achieving changes in race relations. In a democracy no one is subject to greater legal control than those in the Armed Services, and no other aspect of American life is so subject to governmental management, no other control can be so swift and unequivocal."

Upon being faced here with the stark realization of the magnitude of the law's potential, the objective reader, regardless of his views on integration, can scarcely help but wonder about the advisability of increased administrative control over the personal lives of private individuals.

In conclusion, *Race Relations and American Law* is an excellent legal reference in this field, as well as a documentation of the philosophy, methods, and aspirations of the NAACP and similar Negro organizations. It is particularly thought provoking in regard to its legal philosophy and herein, I believe, lies this work's main interest. It can be recommended to anyone who is interested in attaining a more thorough understanding of the subject.

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[18] *Supra* note 9.

[19] Greenberg *supra* note 3, at pp. 20, 114, 192, 202, 203, 205, 248, 273, 291, 292.

[20] *Id.* at pp. 20, 192, 248.